

R E M A R K S

Claims 1-20 are pending. Claims 4, 6 and 21 have been rejected, claims 1-3, 5 and 7-20 are withdrawn from consideration, claims 4 and 6 have been amended and claim 21 has been cancelled.

No new matter has been added by way of the present amendments. For instance, claim 4 has been amended to clarify the nature of the fungal antigen. Claim 6 has been amended to reflect that the isolated nucleic acid encodes a fungal antigen, which, in addition to limitations already recited, originates from the genus *Candida* and has a molecular weight of about 25,000 Daltons. This subject matter is supported by claim 4 and 6 already pending. Claim 6 has also been amended to recite the nature of the hybridization conditions as supported by claim 21, now cancelled. Accordingly, no new matter has been added.

Applicants further submit that no new issues have been raised by way of the present submission which would require additional search and/or consideration on the part of the Examiner. The language of claim 4 has simply been clarified. Claim 6 has been amended to include textual subject matter from claim 21, which subject matter was already searched and considered. Claim 6 was also amended to reflect the fact that the the isolated nucleic acid encodes a fungal antigen, which originates from the genus *Candida* and has a molecular weight of

about 25,000 Daltons. The Examiner, with respect to the structure of the nucleic acid to which the isolated nucleic acid of the preamble of claim 6 hybridizes, already considered these limitations. Accordingly, no new issues have been raised.

In the event that the present submission does not place the application into condition for allowance, entry of the present amendment is respectfully requested as placing the application into better form for appeal.

In view of the following remarks Applicants respectfully request that the Examiner withdraw all rejections and allow the currently pending claims.

Interview of May 28, 2004

Applicants take this opportunity to thank the Examiner for the courtesies extended during the personal Interview of May 28, 2004. The Interview was very much appreciated.

Issues under 35 U.S.C. § 112, second paragraph

The Examiner has rejected claims 4 and 6 under 35 USC § 112, second paragraph for the reasons recited at pages 5-6 of the outstanding Office Action. Applicants respectfully traverse.

First, the Examiner has rejected claim 4 for reciting, "selected from the group consisting of". Applicants have

removed this language from claim 4. Accordingly, this rejection is moot.

Second, the Examiner has rejected claim 6 asserting that it is ambiguous since it lacks a connection between the nucleic acid and the fungal antigen. Claim 6 has been amended to correct this issue. Additionally, the Examiner states that no hybridization conditions have been set forth in the claim. Applicants have added the subject matter of claim 21 to claim 6.

Accordingly, Applicants respectfully submit that the present claims define subject matter that fully satisfies the requirements of 35 U.S.C. § 112, second paragraph. Reconsideration and withdrawal of these rejections are requested.

Issues under 35 USC § 102(b)

The Examiner has rejected claim 4 under 35 USC § 102(b) as being anticipated by Ishiguro et al. The Examiner has also rejected claim 6 under 35 USC 102(b) as being anticipated by Shen et al.

Applicants respectfully incorporate all previous arguments and traverse each of these rejections.

Neither the Ishiguro reference nor the Shen reference suggest or disclose isolated nucleic acids. In contrast, the rejected claims relate to isolated nucleic acids that encode a

specified protein. Claim 4 relates to an isolated nucleic acid encoding a fungal antigen comprising an antigenic protein having a vaccine activity or an allergen activity. The fungal antigen originates from *Candida albicans*, and comprises the partial amino acid sequence as shown by SEQ ID NO: 2 and has a molecular weight of about 25,000 Daltons as determined by SDS-PAGE under reduced conditions.

Claim 6 relates to (1) an isolated nucleic acid encoding (2) a fungal antigen, which nucleic acid hybridizes to (3) a nucleic acid encoding (4) a fungal antigen. Claim 6 has been amended to recite the specific nature of the hybridization conditions. Claim 6 has also been amended to recite specific structure for the fungal antigen (2). In addition to having vaccine activity or allergen activity, the fungal antigen (2) also which originates from the genus *Candida* and has a molecular weight of about 25,000 Daltons.

Neither the Ishiguro reference nor the Shen reference suggest or disclose the currently claimed isolated nucleic acids. In fact, these references fail to suggest isolated nucleic acids at all. Accordingly, there can be no anticipation of claims 4 or 6 based upon either reference since the references fails to even suggest or disclose an isolated nucleic acid, much less disclose the specifically claimed isolated nucleic acids. These rejections are thus improper and should be withdrawn.

The Examiner has also rejected claim 6 under 35 U.S.C. § 102(b) as being anticipated by Boehringer Mannheim Biochemical (1991 Catalog page 557), Stratagene (1991 Product Catalog, page 66), Gibco BRL (Catalogue & Reference Guide 1992, page 292), Promega (1993/1994 Catalog, pages 90-91) or New England BioLabs (Catalog 1986/1987, pages 60-62). Applicants respectfully incorporate all previous arguments and traverse each of these rejections.

These references allegedly disclose random 6-mer primers, 9-mer primers, or primers over 10 nucleotides in length. The Examiner asserts that any one of these primers would hybridize to the isolated nucleic acid molecule of claim 6. Applicants disagree. The isolated nucleic acid molecule of claim 6 encodes a fungal antigen having vaccine or allergen activity. There is no suggestion or disclosure that any of the primers disclosed in the references encode such an antigen having such activity. Moreover, claim 6 requires that the antigen encoded by the isolated nucleic acid originate from the genus *Candida* and have a molecular weight of about 25 kDa. Certainly a 6-mer, 9-mer or multimer primer disclosed by the references cannot encode such an antigen.

Accordingly, no anticipation exists. Reconsideration and withdrawal of these rejections is respectfully requested.

Issues under 35 USC § 102(e)

The Examiner has rejected claim 6 under 35 USC § 102(e) as being anticipated by Takesako et al., USP 6,432,407 (hereinafter referred to as Takesako '407). Applicants respectfully traverse this rejection.

Takesako '407 discloses an antigenic protein originating from the genus *Malassezia* as well as a nucleic acid encoding the protein. However, the isolated nucleic acid according to claim 6 of the present invention encodes a fungal antigen which originates from the genus *Candida*. Takesako '407 fails to suggest or disclose such subject matter, accordingly there exists no anticipation of claim 6 based upon Takesako '407.. Reconsideration and withdrawal of this rejection are therefore respectfully requested.

In summary, Applicants respectfully submit that the present claims define subject matter that is patentable over the cited art. Accordingly, the Examiner is respectfully requested to withdraw all rejections and allow the currently pending claims.


Pursuant to the provisions of 37 C.F.R. §§ 1.17 and 1.136(a), the Applicants hereby petition for an extension of two (2) months to July 12, 2004 in which to file a reply to the Office Action. The required fee of \$420.00 is enclosed herewith.

Should there be any outstanding matters that need to be resolved in the present application, the Examiner is respectfully requested to contact Craig A. McRobbie (Reg. No. 42,874) at the telephone number of the undersigned below.

If necessary, the Commissioner is hereby authorized in this, concurrent, and future replies, to charge payment or credit any overpayment to Deposit Account No. 02-2448 for any additional fees required under 37 C.F.R. §§ 1.16 or 1.17; particularly, extension of time fees.

Respectfully submitted,

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